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1           obtained that knowledge; in other words, was it  
2           from your journal meetings, was it from your  
3           discussions with Dr. Cannon -- or Conner, I'm  
4           sorry.

5                       Can you pinpoint to us, if you can, where  
6           you think the source of the knowledge was that  
7           stress reduction does not -- that there are not  
8           studies that support stress reduction leads to  
9           longer-term remission?

10          A    The knowledge would have come from the fact that I  
11               have never run across any articles which support  
12               that, all right, in 15 years of regularly reviewing  
13               the medical literature and ten years of clinical  
14               practice, where I also kept up an active review of  
15               the medical literature and also dealt with oncology  
16               patients.

17          Q    So you do read these journals that you subscribe  
18               to?

19          A    I review them, yes.

20          Q    And when you review something -- I would take it  
21               that this issue of stress reduction and cancer  
22               remission may have come up more than once, from  
23               what you've just told us?

24          A    I can recollect it's come up at least once or twice  
25               before, but not as an isolated issue on a claim.

1 Q Okay. Well, do you ever, when you read these  
2 articles, make photocopies or some way make a note,  
3 bring it to the office, tear it out of the journal,  
4 so you have a file on this stuff?

5 A If it is of interest to me, and I want to make a  
6 copy, yes, I will.

7 Q Do you have any file at all relating to this  
8 focused issue as to whether stress reduction can  
9 increase long-term remission? Do you have any file  
10 at all where you just have a bunch of documents?

11 A I don't have any file because as I said before,  
12 I've never seen an article, okay, that supports or  
13 doesn't support that issue. I've never seen a  
14 study on that.

15 Q Okay. Tell me in what manner Cynthia Diveglia's  
16 claim came to your desk?

17 A It was brought to my attention through consultation  
18 with Pat Sheehan.

19 Q Okay, and what was the point of the consultation?

20 A The point of the consultation, initially, was the  
21 stated reason for her continuing disability being  
22 to reduce stress in order to lessen the likelihood  
23 of a recurrence.

24 Q The stated reason being her physicians, Drs. Borgen  
25 and Seidman?

1 A That is correct.

2 Q Can you give us an idea as to initially, when you  
3 first had this contact?

4 A I would rather not off the top of my head.

5 Q All right. Let me help you out here. Would it  
6 have been in the year 2000 or earlier?

7 A It was earlier, but I would have to have the file  
8 and look at the --

9 Q If you had the file, when you say the file, are you  
10 talking about the claims file, or did you keep a  
11 separate file?

12 A No, the claims file.

13 MR. DIVEGLIA: Can we go off camera for a  
14 minute, and let the doctor take a look at the  
15 claims file?

16 VIDEOGRAPHER: We're off the record at  
17 12:22 p.m. We are back on the record at 12:25 p.m.

18 BY MR. DIVEGLIA:

19 Q Okay, Doctor, you had an opportunity to review the  
20 file to see when you had initial contact in regard  
21 to this file, and I think you had -- do you need  
22 any additional time?

23 A No, I do not.

24 Q Can you tell us now from reviewing the file, when  
25 you believe you first had contact with this file of

1 Cynthia Diveglia?

2 A January 15th, 1999.

3 Q Okay. At that time, and you have that page in  
4 front of you, about 380, is that correct?

5 A Yes.

6 Q The reference I see is in the last paragraph, it  
7 says, "I discussed with Dr. Powell verbally. He  
8 agrees that this insured has a high risk of  
9 recurrent disease." Is that correct?

10 A That's correct.

11 Q Now, using that as a springboard for opening your  
12 mind up as to what occurred, can you just basically  
13 tell me what conversation took place that relates  
14 to that?

15 A Yes. Basically, this was probably an inoffice  
16 review with Pat Sheehan of these records, at which  
17 point she gave me a capsule summary of the case  
18 while I reviewed the records and then asked me for  
19 my opinion of them, and then she summarized the  
20 records and my opinion.

21 Q Was one of the questions that she asked you, "Does  
22 this lady have a high risk of recurrence"?

23 A That is correct.

24 Q And your answer was what?

25 A Yes.

1 Q And in fact, in your review of the file, I think  
2 you'll find, or perhaps did you find that  
3 Dr. Seidman indicated that she had a 90 percent  
4 chance of recurrence? Do you remember reading  
5 that?

6 A I don't remember the 90 percent, but based on the  
7 number of positive nodes, she has a very high  
8 recurrence rate.

9 Q Just for your reference, that is on Page 196, if  
10 you want to review that for yourself, that that's  
11 what he indicates. It's in the next to the last  
12 sentence of the first paragraph on Page 196.

13 A Yes.

14 Q You wouldn't disagree with that, would you, Doctor?

15 A No, I would not.

16 Q This lady is in pretty big trouble?

17 A This lady has a high likelihood of recurrent  
18 disease.

19 Q So we want to do everything from the medical  
20 standpoint to prevent that from occurring, don't  
21 we?

22 A Yes, you would.

23 Q Now, when you met with Pat Sheehan on this date,  
24 she -- I would assume she presented to you the  
25 various attending physician statements of

1           Drs. Borgen and Seidman that indicated that it was  
2           their opinion that she should not return to trial  
3           work. Do you remember that?

4           A     Yes, I do.

5           Q     And do you remember that the basis of their opinion  
6           that she should not return to trial work was that  
7           it was a high risk -- excuse me, that the stress  
8           and the fatigue of that type of work, in their  
9           opinion, could result in the lessening of the  
10          likelihood of long-term remission?

11          A     Yes.

12                         MR. HENEFER: Objection to the form of  
13          the question. You can answer.

14          BY MR. DIVEGLIA:

15          Q     Words more or less to that effect. Is that your  
16          basic understanding?

17          A     Yes.

18          Q     They felt that the stress and fatigue of trial work  
19          was something that could affect her system to the  
20          point that she could have less likelihood of  
21          remission?

22                         MR. HENEFER: Objection to the form of  
23          the question. You may answer.

24          BY MR. DIVEGLIA:

25          Q     Is that right?

1 A Yes.

2 Q Did Pat Sheehan come to you and say, "Doc, look,  
3 this is what these doctors are saying? What do you  
4 think?" Was that kind of question more or less  
5 presented to you?

6 A She presented this, is there any evidence, okay,  
7 that you're aware of that this can happen, and the  
8 reasoning for her question was, this was totally  
9 inconsistent with recommendations of numerous other  
10 women with high risk recurrent cancer whose claim  
11 files we review from other cancer centers.

12 Q But in fact, though, isn't it a distinguishment in  
13 Cynthia's case that she is involved in the  
14 occupation of trial law?

15 A Most of our women claimants with breast cancer are  
16 professionals in high stress jobs, physicians and  
17 attorneys.

18 Q So these other physicians are indicating, go ahead,  
19 go back to work, go knock yourself out with the  
20 stress? Is that what you're saying that these  
21 other cases were saying?

22 A No. The other physicians, okay, do not restrict  
23 people from returning to high stress professions,  
24 and this is very -- this recommendation was fairly  
25 unique in my experience, okay, that most



1 oncologists are very anxious to get patients back  
2 to their usual work, all right, and especially  
3 if -- get their mind off thinking about a risk of  
4 recurrence.

5 Q In fact, when you reviewed this file, she was  
6 already back to work for well over a year, was she  
7 not, but just not as a trial lawyer?

8 MR. HENEFER: Objection to the form of  
9 the question.

10 THE WITNESS: I do not remember knowing  
11 what her working position was at the time.

12 BY MR. DIVEGLIA:

13 Q If I showed you documents, I mean, I'm going to  
14 represent to you that she had returned to work on  
15 February 9, 1998 and worked continuously from that  
16 date forward.

17 Wouldn't that in fact fit into what these  
18 other doctors were saying about returning to work  
19 because you get the good feelings of returning to  
20 normalcy?

21 A No. What the other doctors, to my mind, allow  
22 their patients, okay, and throughout my experience  
23 oncologists have always encouraged patients to  
24 return to their normal duties and not to let the  
25 fact that they have had cancer, whether or not it

1 has a high risk of occurrence, dictate what they do  
2 for the rest of their life.

3 Q I see, so even though -- let me ask you this.

4 Were any of those other doctors from  
5 Sloan Kettering Memorial Hospital?

6 A They were not from Sloan Kettering Memorial  
7 Hospital, but Sloan Kettering is not the only major  
8 medical cancer center. I've had doctors from M.D.  
9 Anderson in Houston, doctors from Mass General,  
10 doctors from Duke University Medical Center. We  
11 handle -- get medical records on women or people  
12 with cancer from major cancer centers all over the  
13 United States, and this was a very unusual  
14 restriction which is why Pat brought it to my  
15 attention to begin with.

16 Q And would you agree, though, that even though there  
17 are other cancer centers, that it is basically  
18 recognized in the medical world that Sloan  
19 Kettering is the No. 1 cancer institute, hospital  
20 in the country?

21 A I think M.D. Anderson and other centers might have  
22 to take issue with that.

23 Q Certainly, when this issue came -- are you telling  
24 me that your position -- let me ask you this. Has  
25 your position changed at all? Did your position